

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Tulare, Lemoore, Farmersville,
California)

AMERICAN TRANSIT MIX COMPANY, INC.

Employer

and

Case 32-RC-5168

OPERATING ENGINEERS LOCAL
UNION NO. 3, INTERNATIONAL
UNION OF OPERATING ENGINEERS,
AFL-CIO¹

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find, that the Employer is engaged in commerce within the meaning of the Act and, accordingly, the assertion of jurisdiction is appropriate herein.

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The name of the Petitioner has been amended to reflect its affiliation with the AFL-CIO.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. No question concerning representation exists within the meaning of Section 9(c)(1) of the Act.

5. Petitioner seeks to represent a unit of all full-time and regular part-time batch plant operators, mechanics, maintenance employees and loader/operator/yardmen employed by the Employer at its facilities in Tulare, Lemoore and Farmersville, California². The Employer, on the other hand, contends that the petitioned-for multi-facility unit is inappropriate and that only single-facility units would be an appropriate. For the reasons discussed below, I find that the petitioned-for unit is not an appropriate unit.

BACKGROUND

The Employer is a California corporation engaged in the production, sale and delivery of ready-mix concrete and operates 23 ready-mix facilities in California's Central Valley from the city of Lodi in the North to Taft in the South. In order to produce and deliver its product, the Employer employs several different classifications of employees, including batch plant operators, loader/operator/yardmen, mechanics, maintenance employees, and ready-mix truck drivers.

The President of the Employer is Jerry Larsen. Reporting directly to Larsen are the Labor Relations Manager, Jim Hamilton, and the Operations Manager, Harry Ambrosini. The other Operations Managers report directly to Ambrosini. The supervision of the employees employed at the Employer's ready-

² This reflects Petitioner's amendment of the petition at the hearing.

mix facilities is highly centralized, and the evidence indicates that the Employer does not employ supervisors for the batch plants. Instead, regional managers are responsible for the direct supervision of production employees. The Employer uses two different but overlapping regional models. The Employer's administrative grouping for batch plant operators, loader/operator/yard men and ready-mix truck drivers is based on three regions: north, central and south, with a different operations manager assigned to each region. The administrative grouping of the mechanics is based on a northern and a southern region, with each region having a separate supervisor. The maintenance employees are also grouped into a northern and southern region, although, both regions have the same supervisor.

The central region for the batch plant employees includes the Tulare, Lemoore and Farmersville facilities as well as facilities in Madera and Fresno/Friant.³ Perfecto "Junior" Barbosa is the Operations Manager for the central region. His primary office is located in Fresno, which is the office for the central region. It appears that the Fresno office is separate from the Employer's Fresno/Friant batch plant facility. The southern region for the mechanics and maintenance employees runs from Madera south to Taft and includes the Tulare, Lemoore and Farmersville facilities, as well as about nine other facilities. The two maintenance employees, who service each of the 12 facilities in the southern region, report directly to Operations Manager Harry Ambrosini. All of the

³ At the hearing, this facility was referred to as both the Fresno and Friant facility as well as the Fresno/Friant facility. Apparently, the facility is actually located in Friant, which was described as a suburb of Fresno.

mechanics assigned to facilities in the southern region report directly to Elio Alves who has an office at the Tulare facility.⁴

The Employer has only recently acquired the three facilities encompassed by the petition, and in each instance, it did so through a lease with California Portland Cement. The Tulare facility was acquired in about September 2002, the Lemoore facility in about January 2003, and the Farmersville facility in about April 2003. Prior to the Employer's lease of these facilities from California Portland Cement, each of these facilities was owned and operated by Artesia Ready Mix, which apparently lost the facilities through forfeiture.

The parties stipulated that the Employer currently employs one batch plant operator at both the Lemoore and Farmersville facilities and two at the Tulare facility, one of whom is a trainee. It also appears that the Fresno/Friant and Madera facilities each have one batch plant operator. The Employer also employs one loader/operator/yard man at the Farmersville facility and a yardman at Fresno/Friant facility.⁵ The Employer's two mechanics are assigned to the Tulare facility, but also regularly perform work at the Lemoore and Farmersville facilities. The two maintenance employees work out of their homes and perform equipment maintenance at the Employer's 10 southern California region facilities, but the parties agree that they should be considered part of any unit that includes the Tulare facility. The parties also stipulated that the Tulare plant is about 20 miles from the Farmersville facility and about 35 miles from the Lemoore facility, and that the Lemoore facility is about 35 miles from the Farmersville facility. The

⁴ Elio Alves and his northern counterpart report to Ted Newlon. The record is silent on the titles of these individuals.

⁵ It is unclear whether there is a loader or yardman at the Madera facility.

Fresno/Friant and Madera facilities are about 50-70 miles from the petitioned for facilities.⁶

ANALYSIS

Here, the Petitioner seeks to represent certain employees in a multi-facility unit, but does not include employees who are in the same job classifications at other Employer's facilities. In determining whether such a unit is appropriate, the Board considers a number of factors, including the employees' skills and duties; their terms and conditions of employment; employee interchange; the functional integration of the employer's operation; the geographic proximity of the various facilities; centralized control of management and supervision; and bargaining history.⁷ Bashas, 337 NLRB No. 113 (2002); Alamo Rent-A-Car, 330 NLRB 897 (2000), citing, NLRB v. Carson Cable, 795 F.2d 879, 884 (9th Cir. 1986). In particular, the Board focuses on whether the employees in the petitioned for unit share some traits or benefits or other factors that are not also shared by the employees in the same job classifications at other nearby employer facilities, including whether they are in a separate administrative grouping of the employer. Id. Applying this test to the facts of this case, I conclude that the petitioned-for multi-facility unit is not an appropriate unit.

Employee Skills and Duties and Terms and Conditions of Employment

⁶ The record is silent concerning distances between any of the Employer's facilities other than those at Tulare, Lemoore and Farmersville. The distances between the other locations was obtained from Yahoo.com.

⁷ The Employer contends that this case should be analyzed in terms of the Board's single plant presumption. However, it is well established that the single plant presumption does not apply where, as here, the petitioner seeks a multi-facility unit. Capitol Coors Co., 309 NLRB 322, f.1 (1992)

It is undisputed that the skills and duties of employees employed in the same classifications at the three facilities covered by the petition are quite similar, as are their terms and conditions of employment. It is also undisputed that the skills and duties of all of the employees employed by the Employer in the same classifications throughout the area, from Madera to Taft, are essentially the same. Their terms and conditions of employment are also the same, with the exception of those employees employed at the Fresno/Friant facility. The employees at that facility are represented by Petitioner in a single facility bargaining unit. As a result of the collective bargaining agreement governing those employees, many of their terms and conditions of employment differ from those employed at the Employer's other facilities. Further, all un-represented employees at the petitioned for three facilities, as well as all un-represented employees employed by the Employer at its 23 facilities are subject to the same fringe benefit and personnel policies.⁸ Thus, the employees employed in the petitioned for unit do not share any unique skills, duties or conditions of employment.

Employee Interchange

While there is some evidence of interchange among employees employed at the three petitioned-for facilities, I find that the evidence is insufficient to establish substantial interchange, or an interchange that is unique among the Employer's facilities in the Employer's central region. Thus, out of the 9

⁸ According to the undisputed testimony of the Employer's witnesses, all of its unrepresented employees are subject to the same benefits, such as health care and pension, but the wages of unrepresented employees employed in the same classification may vary based on experience and/or length of service

employees in the petitioned-for unit, five rarely, if ever, work anywhere other than at the facility to which they are assigned. In this regard, there is no evidence that the one loader/operator/yardman employed at the Farmersville facility ever works at any of the other two facilities.⁹ The evidence reveals that only occasionally will one of the four batch plant operators employed at the three facilities relieve or help a batch man at one of the other two facilities in the petitioned for unit. Thus, from the time the Lemoore facility went on line in March 2003 to the date of the hearing, the Lemoore batch plant operator was relieved only once and the relief person was a batch plant operator from the Tulare facility, which employed two batch plant operators at that time. Also, since March 2003 on two occasions employees from the Tulare or Farmersville facilities were brought to the Lemoore facility to help the Lemoore batch plant operator with an unusually large or difficult "pour." However, there is also evidence that the Employer would also use batch plant operators from its other facilities, including the facilities in the southern region, in order to fill temporary vacancies in the Tulare, Farmersville or Lemoore facilities. In making such decisions, the Employer considers which facilities have two batch plant operators, and which facilities have a lesser work load. There is also evidence that batch plant employees and yardmen from the Employer's central region were invited to an informational/training session held by the Employer at the Fresno/Friant facility. The meeting was about the use of certain additives sold by an outside vender, and a vender representative led the

⁹ The method of loading materials into the batch plant is different at Farmersville than at Lemoore and Tulare. At Farmersville, the loader/operator/yardman uses a front-end loader to load materials into the batch plant while at Tulare and Lemoore a conveyor belt system is used which does not require a loader/operator/yardman.

meeting. Employees from Lemoore, Farmersville, Madera and Fresno/Friant attended the meeting. It appears that the batch plant operator from Tulare was invited but did not attend the meeting.

The two mechanics assigned to the Tulare facility regularly service the Employees' vehicles at the Tulare, Lemoore and Farmersville facilities, and do not regularly service the vehicles at or from the Employer's other facilities. The Employer's two maintenance employees regularly service the equipment/machinery at the Tulare, Lemoore and Farmersville facilities. However, it is undisputed that these two employees essentially work out of their homes, drive mobile shop trucks and regularly service the plant equipment/machinery for at least the 10 Employer facilities between Madera and Taft, including those at Tulare, Lemoore and Farmersville.

Thus the above described facts do not establish that there is a sufficiently unique employee interchange among the petitioned for facilities to warrant a finding that the three-facility unit is appropriate.

Functional Integration

The three facilities are functionally integrated but no more so than they are with the Madera and Fresno/Friant facilities. Thus, the batch operators of the three facilities are part of the Employer's five facility central region for batch operators. In this regard, the dispatcher based at the Fresno/Friant plant sends the batch plant operators at all five locations daily directions by way of computer

as to what products to mix, when to mix them and for which customers.¹⁰ Moreover, when one of the petitioned for batch plants has a particularly heavy workload or needs a temporary substitute operator, the Employer may send batch operators from any of its batch plants, not merely from one of the other petitioned for plants. With regard to the maintenance work at the three petitioned for facilities, the evidence shows that the employees who perform that work also perform the same work at the seven other facilities in the Employers southern region. Thus, the only unique aspect of functional integration concerning the three petitioned for facilities is the fact that the three mechanics typically perform work only at those three facilities. I have concluded that this fact is not sufficient to establish that the petitioned for unit is sufficiently distinct to constitute a separate appropriate unit.

Geographic Proximity

While the distances between the three facilities in the petitioned for unit are not by themselves sufficiently great to make a multi-facility unit composed of these facilities inappropriate, the fact that there are other similar facilities in the same general area undermines the importance of this factor. Thus, while the three petitioned for facilities are located within about 20-35 miles of each other, the other central region facilities are within about 50 to 70 miles from the petitioned for facilities. I also note that the Employer's Delano facility, part of the Employer's southern region, is located about 37 miles from the Tulare facility. Thus, the evidence of geographic proximity does not establish that the petitioned

¹⁰ The Fresno/Friant dispatcher also dispatches the truck drivers assigned to the five locations. While the truck drivers are assigned to particular facilities within the central district, they are dispatched to the other facilities when needed.

for facilities share a sufficiently unique or separate geographic proximity to warrant a separate unit. See Bashas'. Inc., supra.

Centralized Control of Management and Supervision

It is undisputed that the Employer's managerial and supervisory control over the employees in the petitioned-for unit is highly centralized. Thus, the four batch plant operators and the one loader/operator/yard man in the petitioned for unit are directly supervised not by someone located at the individual facilities but by central region operations manager Junior Barbosa. Barbosa also supervises the employees in those classifications at the Employer's Fresno/Friant and Madera facilities as well. Similarly, the two mechanics assigned to the Tulare facility are supervised by Elio Alves, and he is also responsible for the direct supervision of all of the Employees mechanics from Madera to Taft.¹¹ Similarly, operations manager Ambrosini supervises the two maintenance employees who service the equipment/machinery at Lemoore, Tulare and Farmersville, but he also directly supervises all maintenance employees who service any of the Employer's 23 facilities. In these circumstances, the highly centralized nature of the Employer's managerial and supervisory structure does not support the appropriateness of a multi-facility unit limited only to the Employer's Tulare, Lemoore and Farmersville facilities. Significantly, there is no supervisory link between the Tulare, Lemoore and the Farmersville facilities that is not shared either with the two other facilities in the Employer's central region or even a larger number of facilities. Alamo Rent-A-Car, supra, at 898.

¹¹ The record is silent on the number of mechanics employed by the Employer in the area from Madera south to Taft.

Bargaining History

There is no history of collective bargaining between the Employer and the Union regarding the petitioned-for unit. From about the late 1980s through about 2001, the Union represented a multi-facility bargaining unit, which by 2001 included facilities at Tulare, Lemoore, Farmersville and Lemon Cove. These facilities were then were owned and operated by Artesia Ready Mix.¹² The bargaining unit for these four facilities included all production and maintenance employees, including drivers. Currently, the Union represents a unit of employees at the Employers Fresno/Friant facility.¹³

The Employer has recently recognized Teamsters Local No. 94 as representative of its drivers in single-facility bargaining units at Lemoore, Tulare and Farmersville and has signed single-facility collective bargaining agreements covering the drivers at each of these facilities.¹⁴

Contrary to the contention of the Union, this bargaining history does not necessitate a finding that the petitioned-for unit is appropriate. I note that the Employer is not a successor to the employer that had had the multi-location unit with the Union. It is also not clear that the prior employer had additional facilities at the time when it had the multi-location unit represented by the Union. Moreover, the prior bargaining unit included teamsters, which are not included in

¹² Lemon Cove is located about 29 miles from Tulare, 15 from Farmersville and 45 from Lemoore. The Employer does not operate a facility in Lemon Cove.

¹³ The record does not reveal when the Employer recognized the Union at this facility; although it was prior to the Employer's acquisition of the three petitioned for facilities.

¹⁴ Local 94 also represents the Employer's drivers at its Fresno/Friant facility.

the petitioned for unit.¹⁵ Moreover, the historical bargaining unit had included an additional facility, Artesia Ready Mix's Lemon Cove plant, which is not part of the petitioned for unit. I also note that the Union represents a single-facility unit of the Employer's employees at the Employer's Fresno/Friant facility, which is also a part of the Employer's central region. Therefore, the bargaining history does establish warrant a finding that the petitioned for unit is an appropriate unit.

Based on an analysis of the above factors, I find that the petitioned-for unit is not an appropriate unit. The proposed unit does not conform to any administrative function or grouping of the Employer's operations. There is neither substantial employee interchange nor significant functional integration among the three facilities that is distinguishable from that which exists among all five of the facilities in the Employer's central region. I also note that the petitioned for employees do not share common supervision that is distinct from the employees at the other central region facilities. Alamo Rent-A-Car, *supra* at 898, and Bashas, Inc. I also conclude that any multi-location unit of employees that includes the petitioned-for classifications at the Lemoore, Tulare and Farmersville facilities must also include the employees in those job classifications who work at the Fresno/Friant¹⁶ and Madera facilities.

Finally, I find that single facility units would also be appropriate units. First, I note that there is a presumption that single facility units are appropriate. *Cargel, Inc.*, 336 NLRB No. 118 (2001), and that here the Employer has taken

¹⁵ It is not clear how many drivers were included in the prior multi-location unit. I note that in the Employer's Lemoore facility, there are seven drivers, which is almost as many employees as are in the petitioned for unit.

¹⁶ The fact that the Union already represents the employees in the applicable job classifications at the Fresno/Friant facility does not preclude this result.

the position that such individual units are appropriate units. Second, the evidence listed above shows that the employees at each facility do share a community of interest based on their similar skills, duties, working conditions, wages and benefits. Third, I note that the Employer has previously recognized the Union in a comparable single facility unit at the Fresno/Friant facility and has recognized the Teamsters Union in single location units at the Fresno/Friant facility as well as at the three petitioned for facilities.

As the Union has not taken a position regarding whether it is willing to represent employees in other than the petitioned for unit, I am not directing an election at this time. Based on my decision, the Petitioner may now wish to reconsider whether it wishes to proceed to an election in a different unit. If it does wish to proceed, it will be necessary for the Petitioner to notify the Region promptly that it is seeking an election either in the five facility multi-location unit or in one or more of the individual facility units. The Region will then administratively determine whether the Union has an adequate showing of interest for the unit or units in which it is seeking an election.¹⁷ To the extent that the Union does not have a sufficient showing of interest for the unit or units it is seeking, the Union will then be directed to submit to the Regional Office an adequate showing of interest for such units within 14 days from the date that it is notified of the insufficiency of its showing of interest, or such further time as the Regional Director shall allow. See Casehandling Manual (Part 2),

¹⁷ As the evidence does not establish how many employees are employed in Unit classifications at the Madera and Fresno/Friant facilities, if the Union seeks an election in the five facility unit, the Region, as part of its administrative investigation of the showing of interest, will seek the applicable payroll records from the Employer.

Representational Proceedings, Sec. 11031.2. If the Union fails to submit the required additional showing of interest, or its withdrawal of the petition, within the time provided, the petition will be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington, D.C. by August 21, 2003.

DATED AT Oakland, California this 7th day of August, 2003.

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